



# NEWSLINE

*An Official Publication of the Tennessee Auctioneer Commission  
Tennessee Department of Commerce and Insurance*



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## EDITOR'S NOTE

Terri Walker was elected Chairman of the Tennessee Auctioneer Commission at the August 2004 meeting. Commission Walker, with husband Lance, owns and operates Walker Auctions, based in Memphis, Tennessee.

## Chairperson's Report

by Terri Walker, Chairperson



I want to thank the members of the Tennessee Auctioneer Commission for electing me as the Chairperson for the year 2004-2005. The Chairperson of the Commission is elected by the vote of the Commission each August. I will do my best to guide the Commission for the next year and be responsive to the needs of the licensees.

During my two years serving on the TAC, I used that time to learn about the problems confronting the licensees of this state and the solutions that are available. At almost every meeting, we are presented with new challenges that our licensees face in their daily practice. The TAC tries to give each problem reasonable thought and come up with a solution that is reasonable and fair. It is sometimes difficult to make policy or decisions to fit every situation every time.

My goal for this year is to provide a more "caring and sharing" attitude that will help licensees solve their problems and offer options other than fines to solve some of the cases brought before the Commission. I would also like to see auctioneers become more cooperative in their local markets and help us solve problems. Winston Churchill said "We make a living by what we get, but we make a life by what we give." The auction business in Tennessee needs a more sharing atmosphere that will help give rise to a better profession and result in a more responsive business to our buyers and sellers.

One of the problems I see every meeting is a long list of simple violations for items that have been the law or rule in Tennessee for at least two years. We continue to have violations with regard to absolute auctions. We continue to have advertising violations with regard to absolute auctions, buyer's premiums, bankruptcy ID numbers, and firm license numbers. These particular requirements have been in force for two years or more and we still see violations. I encourage you to read this newsletter each quarter and keep informed on changes that will impact your business.

The next TAC Seminar program will be held in Knoxville on Monday, November 15<sup>th</sup>, 2004, at the Knoxville Expo Center, Knoxville, Tennessee. We look forward to seeing you there.

## COMMISSION MEMBERS AND STAFF

**Terri Walker**, Chairperson

Term 9/1/02 - 8/31/05

**Howard Phillips**, Board Member

Term 9/1/03 - 8/31/06

**Jay Whirley**, Board Member

Term 11/30/00 - 8/31/04

**Charles Woodard**, Board Member

Term 9/1/01 - 8/31/04

**John McLemore, Esq.**, Consumer Member

Term 9/1/04 - 8/31/07

**Lynn McGill**, Administrative Director

lynn.mcgill@state.tn.us

**Sheila Piper**, Administrative Assistant

sheila.d.piper@state.tn.us

**Dennis Hodges**, Investigator

dennis.hodges@state.tn.us

website: [www.state.tn.us/commerce/boards/auction](http://www.state.tn.us/commerce/boards/auction)

## MISSION STATEMENT:

The mission of the Tennessee Auctioneer Commission is to protect the public and licensees by monitoring the auctioneer profession through licensure and regulation.

## STATE OF TENNESSEE

DEPARTMENT OF COMMERCE & INSURANCE

TENNESSEE AUCTIONEER COMMISSION

500 JAMES ROBERTSON PARKWAY

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NASHVILLE, TENNESSEE 37243-1152

615-741-3236

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## CORRECTION NOTICE

In the last edition of this newsletter there was an error in the text as a result of editing. This notice represents a correction of the text found at the bottom of the first page on the June 2004 edition.

**The correct text is as follows:** "You may convert a reserve auction to an absolute auction on sale day. You may **NOT** convert an absolute auction to an reserve auction on sale day by making such announcement prior to the beginning of the sale."

In a recent case before the TAC, an auctioneer advertised an ABSOLUTE AUCTION for the sale of certain real estate in lots. On sale day he/she made an announcement that the auction was being converted to a RESERVE AUCTION and then held the auction selling some lots and reserving others. The TAC concluded the activity was an advertising violation and the firm owner was fined \$500.

Absolute Auction is defined as: "An auction at which property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, where the seller may not bid himself or through an agent, and where the seller will deliver marketable title."

The TAC has ruled in previous cases that an ABSOLUTE AUCTION is an auction with no contingencies. Here are some issues with regard to ABSOLUTE AUCTIONS that have already been resolved by the TAC.

- ☑ Do not advertise you are selling the equity above the mortgage.
- ☑ The terms of the auction must be cash.
- ☑ The seller must sign a contract stating he/she will sell the property regardless of price.
- ☑ The assumption of an existing loan and the additional payment of equity are considered cash.
- ☑ The sale of the property under terms offered by a seller or lender is considered as cash.
- ☑ Title to the property must pass at a closing after the auction to a legitimate buyer.
- ☑ Do not list the amount of the mortgage in the ad as this can be construed as a floor for the bidding.

(continued next column)

- ☑ An Absolute Auction may be cancelled for lack of adequate participation (before the auction is opened and property is offered) or if no bids are offered within a reasonable time.

We hope this information will help you in your auction practice. Make sure all of the apprentice auctioneers and auctioneers in your firm are aware of this information.

## BANKRUPTCY AUCTIONS REVISITED

There have been a number of violations brought before the TAC with regard to the marketing and management of *Bankruptcy Auctions*. The following issues have been previously addressed by the TAC relating to this subject:

- ◆ Bankruptcy auctions do not have to be advertised as bankruptcy auctions in the auction heading.
- ◆ Bankruptcy auction advertisements do require the display of a bankruptcy number.
- ◆ The bankruptcy auction must be held in conjunction with an actual bankruptcy (one or more cases).
- ◆ You cannot buy merchandise at a bankruptcy auction and take it to another location and sell it under the disguise of a bankruptcy auction.
- ◆ You must have the property orders or contracts from the Bankruptcy Court or Trustee on file in your firm office.
- ◆ The legal owner of the property must be in bankruptcy at the time of the bankruptcy auction.

The rules with regard to bankruptcy auctions were promulgated in order to protect the public and other auctioneers holding legitimate bankruptcy auctions. The TAC had several cases before it where mostly out-of-state auction firms were bringing merchandise into Tennessee, selling it as though it was the result of a bankruptcy, and advertising the sale with false bankruptcy case numbers.

The TAC is charged by law to protect the consumer and this is one way it has responded to these past fraudulent auctions.

If you want to be on the agenda at a Commission Meeting, call Lynn McGill or Sandy Cooper to make arrangements. Anyone not on the agenda, please schedule for the next meeting.

## **Disciplinary Corner**

by Dennis Hodges, Investigator

The following is a report of disciplinary and other actions taken by the Commission over the last few months. These cases have been investigated and closed and are now part of the public record.

Although every effort is made to ensure that the information is correct, you should check with the Commission to assure accuracy.

### **Nashville Auto Auction - \$500.00 - Consent Order issued.**

Respondent allowed an auctioneer to conduct auction activity before being properly licensed. Tennessee Auctioneer Commission Law, § 62-19-102.(a)(1) It is unlawful for any person to: (1) Act as or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter or prior state law.

### **A.D.E.S.A of Knoxville Inc - \$500.00 - Consent Order issued**

Respondent allowed auctioneer with an expired license to conducted auction activity Tennessee Auctioneer Commission Law, § 62-19-102.(a)(1) It is unlawful for any person to: (1) Act as or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter or prior state law.

### **Lynn Jackson Auction & Real Estate Co \$500.00 - Consent Order issued.**

Respondent allowed an apprentice auctioneer to conduct auction activity before being properly licensed. Tennessee Auctioneer Commission Law, § 62-19-102.(a)(1) It is unlawful for any person to: (1) Act as or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter or prior state law.

### **Verastar of Nashville DBA Auto Disposal of Nashville Inc - \$500.00 - Consent Order issued**

Respondent allowed auctioneer with an expired license to conducted auction activity Tennessee Auctioneer Commission Law, § 62-19-102.(a)(1) It is unlawful for any person to: (1) Act as or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter or prior state law.

### **Donald R Goff - \$100.00 - Consent Order Issued**

Respondent called bids at an auction without the presence of his/her sponsor. An apprentice's sponsor is responsible for all auctioning activities of the apprentice and must be physically present to monitor those activities. 0160-1-.12(9) (c) APPRENTICES - SPONSORS - SUPERVISION.

### **Robert T. Treadway - \$500.00 - Consent Order issued.**

Respondent allowed auctioneer with an expired license to conducted auction activity Tennessee Auctioneer Commission Law, § 62-19-102.(a)(1) It is unlawful for any person to: (1) Act as or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter or prior state law.

### **Terry R. Thompson - \$1,000.00 - Consent Order issued.**

Respondent conducted auction activity with an expired license. Tennessee Auctioneer Commission Law, § 62-19-102.(a)(1) It is unlawful for any person to: (1) Act as or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter or prior state law.

### **James A Whirley Jr - \$500.00 - Consent Order issued**

Respondent conducted auction activity with an expired license. Tennessee Auctioneer Commission Law, § 62-19-102.(a)(1) It is unlawful for any person to: (1) Act as or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter or prior state law.

### **Maverick Land & Auction Co. - \$100.00 - Agreed Citation issued.**

Respondent ran an advertisement that was in violation of 0160-1-.20 ADVERTISING GUIDELINES. (1) Advertising in any form that is designed to give notice of an upcoming auction must include the name and license number of the auction firm or gallery responsible for holding the sale.

### **Willard M. Stowers - \$500.00 - Citation issued**

Respondent conducted auction activity before being properly licensed. Tennessee Auctioneer Commission Law, § 62-19-102.(a)(1) It is unlawful for any person to: (1) Act as or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter or prior state law.

## ***New Additions to Auctioneer Board***

Govenor Phil Bredesen has appointed John McLemore, Esquire to the board as the consumer member. Mr. McLemore is a partner in the law firm of Garfinkle, McLemore & Walker, located in Nashville, Tennessee. Mr. McLemore's appointment was announced just prior to the printing of this newsletter, and we will have further information in the next TAC Newsline.

TAC also has a new staff attorney. We welcome Marilyn A. Tucker of Primm Springs, Tennessee to the TAC. Ms. Tucker received her formal education from Vanderbilt University/Peabody, and Tennessee State University, graduating from the University of Tennessee with a Degree of Jurisprudence in 1983.

Currently assigned to the cosmetology, funeral, collections, barber, burial and auctioneer boards/commissions, Ms. Tucker also advises boards and staff on pertinent law and regulations and acts as prosecutor in contested UAPA licensing matters.

The TAC would like to welcome both Ms. Tucker and Mr. McLemore to our board and we look forward to working with them.



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"The Tennessee Department of Commerce and Insurance is committed to principals of equal opportunity, equal access, and affirmative action." Contact the EEO Coordinator or ADA Coordinator (615) 741-2177 (TDD).

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## ***Next Free Seminar Scheduled for November 15, 2004***

The next scheduled Free Seminar provided by the Tennessee Auctioneer Commission is scheduled for November 15th at the Knoxville Expo Center located in Knoxville, Tennessee. Our topic will be on the auction of firearms and we will have a representative from the Alcohol, Tobacco and Firearms division to speak at this seminar. This course will provide six hours of continuing education credit.

### ***Facts at a Glance...***

Date: Monday, November 15th  
 Time: 8:00 a.m. - 2:00 p.m.  
 (no lunch break)  
 Place: Knoxville Expo Center  
 5441 Clinton Highway  
 Knoxville, TN  
 865-686-3200

Topic: "Firearms at Auction"  
 Credit: 6 hours auctioneer credit  
**Note:** You must be present  
 100% of the classroom  
 presentation to receive  
 credit.

***Pre-registration: None***

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